such could be had by any of the parties to the suit or any of the more responsible persons connected with the Temple, that is to say, the trustees, the Board of Management and the Executive Committee. All of these persons have liberty to apply in the old suit "generally for the purpose of giving effect to, or for carrying into effect the provisions of this order". If it is necessary to amend the scheme, such can be done without recourse to the Court, as provision is included in the scheme for its own amendment, and under proper safeguards.

There is a further safeguard in the order itself in that before this past litigation can be re-opened, leave has to be obtained *ex parte* and there is the still further safeguard against any such application being made without substantial cause in that upon such *ex parte* application such leave may be given upon terms as to costs or security for costs. Herein, in my opinion, lies the main reason why this present suit has been instituted instead of application being made in the old suit.

It was also urged strongly in argument before me that because the Legal Adviser has given his consent to this present suit being instituted, therefore, *ipso facto,* it is a proper suit and one which this Court should entertain. With the greatest respect, I can see no substance in this argument. It may very well be that the existing state of the affairs of the Temple justify bringing them before the Court and the Legal Adviser may have been of that opinion, but how those matters are to be brought before the Court is no concern of his.

In my opinion the proper procedure was to make application to the Court as provided for in the old suit and not only is this present suit precluded by section 5 of the Civil Procedure Code, but also there is a discretion in the Court which, under its inherent jurisdiction, should be exercised to stay the present suit, as it is in the nature of a concurrent suit, by the same parties in their representative capacities, and asking for substantially the same relief as was asked for in the old suit.

There will, therefore, be an order accordingly, with costs against the plaintiffs.

Suit stayed.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

April 4, 1940.

BEDAH BINTI HAJI OSMAN as legal personal representative of GADANG BIN MAULANA

(Plaintiff)

vs.

IBRAHIM BIN HAJI MOHAMED SALLEH

(Defendant).

[SELANGOR CIVIL SUIT No. 79 of 1938]

Land Enactment 1911 S. 37 (1)—Land Code (F.M.S.) S. 42—Registration as proprietor gives indefeasible title except in case of actual fraud—remedy of person dissatisfied with decision of Collector of Land Revenue.

In 1920 the defendant made an application under S. 37 (1) of the Land Enactment 1911 to the Collector of Land Revenue to have his name substituted in the register for that of the plaintiff. Due notice of the application was gazetted and published and posted on the land itself. Evidence was recorded from which it appeared that the defendant was in possession of the land and was entitled to such possession. The defendant stated that the plaintiff's whereabouts was unknown. The Collector of Land Revenue made an order accordingly and the transfers to the name of the defendant were duly made and his name entered as the registered proprietor of the lands. The plaintiff brought a claim for a declaration of ownership of the land in question in him and that the defendant execute a memorandum of transfer of the same to him.

Held, (1) That the defendant has, as the registered proprietor, an indefeasible title to the land except where there is a specific allegation of fraud, and the facts here alleged do not amount to actual fraud.

Held, (2) That a party dissatisfied with the decision of the Collector must take the remedy of appeal given to him by the Land Code and if he does not do so he must be taken to have acquiesced therein.

Subramanian v. Muthiah Chetty(2) applied.

Cases referred to:—

(1) *Ong Tin v. Seremban Motor Garage,* 1 F.M.S.L.R. 308.

(2) *Subramaniam v. Muthiah Chetty,* 3 M.L.J. 222; (1933-4) F.M.S.L.R. 270.

R. H. Legge for Plaintiff.
Tengku Ismail for Defendant.

Gordon-Smith, J.—Paragraph 7 of the Defence alleges that the Plaintiff's claim is not maintainable in law and this point was, by agreement, taken as a preliminary issue.

The Defendant is the registered proprietor of lots 1435 and 576 in the Ulu Langat Mukim as appears by Certified Extracts from the Mukim Register Nos: 5086 and 5087.

The Plaint alleges that the Plaintiff is the owner of the land comprised in E.M.R. 5086 and of a half share with the Defendant of the land comprised in E.M.R. 5087.

The circumstances under which the Defendant was alleged to have been in possession of these lands prior to 1920 are set out in the Plaint.

In 1920 the Defendant claimed these lands and applied to the Collector of Land Revenue to have his name substituted in the register for that of the Plaintiff.

The application was heard by the Collector of Land Revenue in due course on the 25th October, 1922, and a copy of the proceedings before him was put in.

This shows that the application was made under section 37 (i) of the Land Enactment 1911, which section had been re-enacted by Enactment No. 41 of 1918. The relevant section in the present Land Code, which came into force in 1928 is section 107 but it is very different in terms to section 37 (i) of the Enactment of 1911, and in the present Land Code there is a saving clause as to the rights and privileges and acts done under the Enactment of 1911, then thereby repealed.

Section 37 (i) appears to have been complied with by the Collector of Land Revenue in respect of the application before him, that is to say, due notice of the application was gazetted and published and posted on the land itself.

Evidence was recorded from which it appeared that the Defendant was in possession of the land and was entitled to such possession. The Defendant stated that the Plaintiff's whereabouts were unknown.

The Collector of Land Revenue made an order accordingly and the transfers to the name of the Defendant were duly made and his name entered as the registered proprietor of the lands.

As such registered proprietor, the Defendant has, by section 42 of the Land Code an indefeasible title, except as therein stated. There is nothing alleged in the Plaint which specifically brings the matter within any of the exceptions referred to, *i.e.*, there is no specific allegation of fraud nor can one say that the facts alleged amount to actual fraud.

In such case the Defendant's title as registered proprietor is indefeasible, see *Ong Tin & Goh Soo Pin v. Seremban Motor Garage,*[1].

The Plaintiff's claim is for a declaration of ownership of the land in question in the Plaintiff and that the Defendant execute a Memorandum of Transfer of the same to the Plaintiff.

I would point out that as far back as 1922 the Collector of Land Revenue held an enquiry into the matter, as detailed above, and made an order thereon and by section 38 of the 1911 Enactment, comprehensive provisions are made for an appeal by any person aggrieved by such order, firstly to the Commissioner and then to the Court.

In *Subramaniam v. Muthiah Chetty,*[2] it was held by the Court of Appeal that a party dissatisfied with the decision of a Collector must take the remedy of appeal given to him by the Land Code and if he does not do so he must be taken to have acquiesced therein, even though the Collector while acting within his powers may have made mistakes in his application of the law. In the course of the Judgment, it is stated:

> "We are of the opinion that the dissatisfied party must take the remedy of appeal under section 237 if that is open to him and that if he fails to appeal he must be taken to acquiesce in the order. Otherwise by instituting a declaratory suit he attempts to obtain the same result as he would by appealing but evades the time limit prescribed by section 237."

It appears to me that this decision, by which I am bound, exactly fits the circumstances of this case and must be applied.

The result is, therefore, that this suit is not maintainable by the Plaintiff and it must be dismissed with costs. Such, of course, is without prejudice to any further step the Plaintiff may think fit to take under the Land Code, on the proceedings previously taken before the Collector.

Suit dismissed.